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From:

Sent: Monday, December 20, 2010 9:04:55 AM

To:

Cc:

Subject: RE: payments on accounts

Hi

Rev. Proc. 2005-18 provides that a taxpayer may designate a remittance as a section 6603 deposit by including a written statement stating (1) type of tax, (2) tax year and (3) amount of and basis for the disputable tax. Based on the facts given and the application of Rev. Proc. 2005-18, the taxpayer's remittances do not satisfy this criteria and are therefore undesignated remittances. Undesignated remittances are treated as payments of tax.

As a result, the application of the remittance to the deficiency was appropriate. The remittances made for and should be treated the same--as payments of tax. Additionally, an undesignated remittance that is treated as a payment of tax may be assessed upon posting to the taxpayer's account. See Rev. Proc. 2005-18, section 4.01(2). Therefore, the assessment of the liability was also appropriate. Even if the amount remitted as a payment is not assessed, it will be taken into account in determining whether there is a deficiency and whether a notice of deficiency should be issued. *Id.* The facts indicate there was no assessment for and . With respect to payments made before the issuance of a notice of deficiency, the Service has the discretion to assess any amounts made as a payment. See Treas. Reg. 301.6213-1(b)(3). The Service should assess the amounts characterized as payments of tax for and .

From the facts, it appears that for and there is a deficiency even after the remittances are taken into account as payments of tax. Under the circumstances, a notice of deficiency should be issued with respect to the remaining balance. This will toll the period of limitations for assessment with respect to the amount shown on the notice of deficiency. The notice of deficiency can also advise that we are denying the taxpayer's protest/disallowing her claim for refund for the amounts remitted. This will grant the taxpayer access to the Tax Court for those amounts.

With respect to any tax year in which the remittance is insufficient to satisfy the full deficiency, interest and penalty--such as and --the principles of Rev. Proc. 2002-26 applies: the amount will be applied to tax, penalty and interest, in that order, until the amount is absorbed.

If you have any further questions, give me a call.